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OFFICE OF PETITIONS

In re Application of	:	
Walker et al.	:	
Application No. 09/609,931	:	DECISION ON PETITIONS
Filed: June 30, 2000	:	
Attorney Docket No. 99-099	:	

This is a decision on the petition under 37 CFR 1.48(a), filed December 20, 2005, to add persons as inventors of the above-identified application. This is also a decision on the petition under 37 CFR 1.183, filed December 20, 2005, to waive 37 CFR 1.48(a)(3), which requires the actual inventors to execute an oath or declaration in compliance with 37 CFR 1.63.

On June 30, 2000, petitioner filed the above-identified application, including a properly executed declaration. On petition, petitioner requested that the Office add Daniel E. Tedesco, Andrew S. Van Luchene, and John B. Dickerson as joint inventors in the above-identified application. Petitioner stated that inventor, Anna Rath, who executed the original declaration, refused to execute the declaration submitted with the petition pursuant to 37 CFR 1.48(a)(3).

Petition Under 37 CFR 1.183

Petitioner asserted that inventor, Anna Rath, who executed the original declaration, refused to execute the declaration submitted with the petition pursuant to 37 CFR 1.48(a)(3). Thus, petitioner requested that the Office waive the requirement of 37 CFR 1.48(a)(3).

Pursuant to 37 CFR 1.183, in an extraordinary situation, when justice requires, any requirement of the regulations, which is not a requirement of the statutes, may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party. In support of petitioner's assertion of Ms. Rath's refusal, petitioner submitted the Affidavit of Michael D. Brinton. Mr. Brinton stated that he mailed a copy of the application papers, including the drawings, a Combined Declaration and Power of Attorney, an Assignment, and a self-addressed stamped envelope to Ms. Rath at her last known address. Additionally, Mr. Brinton attested that he left a telephone message for Ms. Rath at her place of employment; however, she did not contact him or executed the requested documents.

In view of the fact that Ms. Rath refused to sign the declaration, it is agreed that justice would be served by waiving the requirement of 37 CFR 1.48(a)(3).

Accordingly, the petition under 37 CFR 1.183 is granted.

Petition Under 37 CFR 1.48(a)

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

- (1) A request to correct the inventorship that sets forth the desired inventorship change;
- (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
- (4) The processing fee set forth in § 1.17(i); and
- (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

Petitioner has met the requirements of 37 CFR 1.48(a). Accordingly, the petition under 37 CFR 1.48 is granted. A corrected filing receipt accompanies this decision.

Lastly, in the petition of June 3, 2005, petitioner asked that upon the acceptance of the request to add the new inventors, the Office change the order of inventors as listed in the petition. **The Office notes that the order of inventors will appear as listed in the executed declaration submitted on that date. However, petitioner may file a petition under 37 CFR 1.182 with a \$400.00 petition fee, requesting that the Office change the order of the inventors as indicated in the petition.**

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

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Office of Petitions

Enclosure: Corrected filing receipt